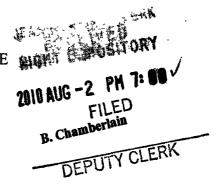
YAVAPAI COUNTY ATTORNEY'S OFFICE JOSEPH C. BUTNER SBN 005229 DEPUTY COUNTY ATTORNEY 255 East Gurley Street Prescott, AZ 86301 Telephone: 928-771-3344 ycao@co.yavapai.az.us



IN THE SUPERIOR COURT OF STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Cause No. P1300CR20081339

Plaintiff,

Defendant.

Division 6

STEVEN CARROLL DEMOCKER,

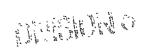
STATE'S BENCH MEMORANDUM ON JUROR MISCONDUCT

SIEVEN CARROLL DEVIOCRER,

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its bench memorandum regarding juror misconduct.

The granting of a new trial on the basis of jury misconduct is a matter within the sound discretion of the trial court. *State v. Rocco*, 119 Ariz. 27, 579 P.2d 65 (App.1978). In this case the Judge conducted an investigation of Juror # The Juror satisfied the court that he can be fair and impartial and can adhere and will adhere to the admonition. The Juror denied making any comment about defense counsel He indicated that he continues to be openminded about the case and had not made up his mind. He told the Judge and attorneys that at other times other jurors would begin discussing the case or the evidence and the other jurors

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would "shush" the offending jurors and all discussion would cease. This demonstrates that all the Jurors, including Juror # know and understand the importance of the admonition.

This Court has conducted an evidentiary hearing concerning this juror in chambers. It is soundly within the judge's discretion to keep or remove a juror for failure to abide by the admonition. In State v. Miller, 178 Ariz, 555,875 P.2d 788 (1994) the Arizona Supreme Court found that communication from an alternate juror that had been dismissed to a juror that was deliberating on the case was improper. There is no such alleged improper communication in the case at bar. In *Miller*, id, the court held that the trial court abused its discretion in denying the defense request for an evidentiary hearing. If the hearing that has been held in chambers in the case at bar is deemed to be insufficient, it is respectfully requested that all jurors be questioned individually concerning Juror # s conduct, rather than allow unsubstantiated allegations by one other juror to dictate whether Juror #@remains on the jury. No actual prejudice has been found or can be presumed from the facts adduced in the in chambers evidentiary hearing.

RESPECTFULLY SUBMITTED this 2nd day of August, 2010.

Sheila Salliyan Polk YAVAPALCOUNTY ATTORNEY

C. Butner

Deputy County Attorney

Office of the Yavapai County Attorney 255 E. Gurley Street, Suite 300 Prescott, AZ 86301 Phone: (928) 771-3344 Facsimile: (928) 771-3110

1	COPIES of the foregoing delivered this 2nd day of August, 2010 to:
2	Zha day of August, 2010 to.
3	Honorable Warren R. Darrow Judge of the Superior Court
4	(via email)
5	John Sears 107 North Cortez Street, Suite 104
6	Prescott, AZ 86301
7	Attorney for Defendant (via email)
8	Larry Hammond
9	Anne Chapman
10	Osborn Maledon, P.A.
10	2929 North Central Ave, 21 st Floor Phoenix, AZ
11	Attorney for Defendant
12	(via email)
13	Rala
14	By: 1 2 WOR
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